

Contract Number KXXX

for

between the

Washington State

Department of Transportation

and

[Vendor]

Effective Date: _____

]

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- Schedule A:** *Authorized Services and Price List*
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- Exhibit A:** *[Purchaser] Request for [Proposal/Quotation/Qualifications and Quotation] for
[describe acquisition]*
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CONTRACT NUMBER KXXX

for

Security Equipment and Software Maintenance Services

PARTIES

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Department of Transportation, an agency of Washington State government ("WSDOT") located at 310 Maple Park Ave. SE, Olympia, WA, and [Vendor], a [corporation/sole proprietor or other business form] licensed to conduct business in the state of Washington ("Vendor"), located at [Vendor address] for the purpose of providing security equipment and software maintenance services.

RECITALS

The state of Washington, acting by and through WSDOT, issued a Request for *Qualifications and Quotation* dated June 4, 2014, (Exhibit A) for the purpose of purchasing security equipment and software maintenance services in accordance with its authority under chapter 39.26 RCW.

[Vendor] submitted a timely Response to WSDOT's RFQQ (Exhibit B).

The WSDOT evaluated all properly submitted Responses to the above-referenced RFQQ and has identified [Vendor] as the apparently successful Vendor.

The WSDOT has determined that entering into a Contract with [Vendor] will meet WSDOT's needs and will be in WSDOT's best interest.

NOW THEREFORE, WSDOT awards to [Vendor] this Purchased Services Contract, the terms and conditions of which shall govern Vendor's furnishing to WSDOT the security and software maintenance services. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

"Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data.

"Contract" shall mean this document, all schedules and exhibits, Statements of Work, and all amendments hereto.

“Department” shall mean the same as WSDOT.

“Effective Date” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Exhibit A” shall mean the RFQQ.

“Exhibit B” shall mean *[Vendor]*’s Response.

“Price” shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

“Product(s)” shall mean any Vendor-supplied equipment, Software, and documentation.

“Proprietary Information” shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Purchased Services” or **“Services”** shall mean those Services and activities provided by Vendor to accomplish routine, continuing, and necessary functions as set forth in this Contract or a Statement of Work. Purchased Services shall include those Services specified as Purchased Services in RCW 43.105.020.

“RCW” shall mean the Revised Code of Washington.

“RFQQ” shall mean the Request for Qualification and Quotation used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“Response” shall mean Vendor’s Response to WSDOT’s RFQQ for EFS maintenance support, Exhibit B hereto.

“Schedule A: *Authorized Services and Price List*” shall mean the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

“Schedule B: *Statement of Work Template*” shall mean the attachment to this Contract that provides example terms and conditions for a Statement of Work.

“Schedule C: *MWBE Certification*” shall mean the attached certificate(s) indicating Vendor’s and/or one or more of Vendor’s Subcontractor’s status as a minority or women’s business enterprise.

“Software” shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“Specifications” shall mean the technical and other specifications set forth in the RFQQ, Exhibit A, and any additional specifications set forth in Vendor’s Response, Exhibit B.

“State of Washington” Unless otherwise restricted, includes all members of the State of Washington, State Purchasing Cooperative including where applicable: State agencies, political subdivisions of Washington qualified non-profit corporations, institutions of higher education

(e.g., colleges, universities, community & technical colleges) who choose not to purchase independently under RCW 23.B.10.029.

“Statement of Work” or **“SOW”** shall mean a separate statement of the work to be accomplished by Vendor under the terms and conditions of this Contract. A template SOW is attached as Schedule B.

“Subcontractor” shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“Vendor” shall mean *[Vendor]*, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“Vendor Account Manager” shall mean a representative of Vendor who is assigned as the primary contact person whom the WSDOT Project Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

“Vendor Contracting Officer” shall mean *[title of Vendor officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

“Work Product” shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

“WSDOT” shall mean the state of Washington, Department of Transportation, any division, section, office, unit or other entity of WSDOT or any of the officers or other officials lawfully representing WSDOT.

“WSDOT Contract Administrator” shall mean that WSDOT employee designated to receive legal notices, and to administer, amend, or terminate this Contract.

“WSDOT Contracting Officer” shall mean the Assistant Secretary of WSDOT Finance & Administration, or the person to whom signature authority has been delegated in writing. The term includes, except as otherwise provided in the RFP, an authorized representative of the WSDOT Contracting Officer acting within the limits of his/her authority.

“WSDOT Project Manager” shall mean the WSDOT employee designated to manage and provide oversight of the day-to-day activities under this Contract. The WSDOT Project Manager shall be the primary contact with Vendor concerning Vendor’s performance under this Contract; Provided that, the WSDOT Project Manager does not have authority to accept legal notices on behalf of WSDOT or amend this Contract.

Contract Term

2. Term

2.1. Term of Contract

- a) This Contract's initial term shall be from June 9, 2014 through June 8, 2017 or as otherwise terminated by either party in accordance with the Termination provision of this Contract.
- b) This Contract's term may be extended by three (3) additional one (1) year terms, provided that the extensions shall be at WSDOT's option and shall be effected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and Vendor accepting such extension prior to the then-current Contract term's expiration. The total term of this Contract shall not exceed five (5) years. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

- 2.2. Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. The term of the SOW shall not exceed the term of this Contract. The SOW may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

3. Survivorship

*All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Ownership/Rights in Data; Vendor's Commitments, Warranties and Representations; Protection of WSDOT's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of this Contract.*

Pricing, Invoice and Payment

4. Pricing

- 4.1. The total amount expended under this Contract shall not exceed [] dollars (\$).
- 4.2. Vendor agrees to provide the Services at the Prices set forth *[below or in Schedule A]*. No other Prices shall be charged by Vendor for implementation of Vendor's Response.
- 4.3. Prices may not be increased during the initial term of the Contract.
- 4.4. If Vendor reduces its Prices for any of the Services during the term of this Contract, WSDOT shall have the immediate benefit of such lower Prices for new purchases.

Vendor shall send notice to the WSDOT Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect

5. Advance Payment Prohibited

No advance payment shall be made for Services furnished by Vendor pursuant to this Contract. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Software or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

6. Statewide Vendor Status

Vendor shall have completed registration with the Washington State Office of Financial Management (OFM) to become a statewide vendor number within ten (10) business days of notification of contract award.

7. Taxes

- 7.1. WSDOT will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of Washington State government, is exempt from property tax.
- 7.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 7.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

8. Invoice and Payment

- 8.1. Vendor will submit properly itemized invoices to WSDOT, Information Technology Division, Attn: Bob Loveless at PO Box 47430, Olympia, WA 98504, 7430.. Invoices shall provide and itemize, as applicable:
 - a) WSDOT Contract number **KXXX**;
 - b) SOW number **[YY-YY]**;
 - c) Vendor name, address, phone number, and Federal Tax Identification Number;
 - d) Description of Services provided;
 - e) Vendor's Price for Services;
 - f) Net invoice Price for each Service;
 - g) Applicable taxes;
 - h) Other applicable charges;
 - i) Total invoice Price; and

j) Payment terms including any available prompt payment discounts.

- 8.2. With each invoice Vendor shall provide an *Affidavit of Amounts Paid* specifying the amounts paid to each certified MWBE under the Contract, as set forth in Section 16 below.
- 8.3. WSDOT shall pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.
- 8.4. Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.
- 8.5. The WSDOT Contract number KXXX and SOW number *[YY-YY]* must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 8.6. WSDOT shall not honor drafts, nor accept goods on a sight draft basis.
- 8.7. If WSDOT fails to make timely payment, per [RCW 39.76.010](#), Vendor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Vendor's properly prepared invoice, whichever is later.

9. Duplicate Payment

WSDOT shall not pay the Vendor, if the Vendor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

10. Overpayments to Vendor

Vendor shall refund to WSDOT the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, WSDOT may charge Vendor one percent (1%) per month on the amount due, until paid in full.

Vendor's Responsibilities

11. Purchased Services and Statement of Work

- 11.1. All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW established between WSDOT and Vendor.
- 11.2. The SOW shall at a minimum:
 - a) Reference this Contract number KXXX;
 - b) Define project or task objectives;
 - c) Describe the scope of Services or work to be performed;
 - d) Identify deliverables;
 - e) Specify a timeline and period of performance;

- f) Specify compensation and payment, e.g., the hourly rate and total Vendor hours to be provided or the fixed price for a deliverable, (whichever is applicable), total cost of the project, and reimburseable Vendor expenses;
 - g) Describe Vendor's roles and responsibilities and identify specific Vendor staff;
 - h) Describe WSDOT's roles and responsibilities;
 - i) Provide signature block for both parties.
- 11.3. The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

12. Commencement of Work

No work shall be performed by Vendor until an SOW is executed by Vendor and WSDOT and is received by Vendor.

13. Ownership/Rights in Data

- 13.1. WSDOT and Vendor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq.*, and shall be owned by WSDOT. Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 13.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to WSDOT the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 13.3. Vendor shall execute all documents and perform such other proper acts as WSDOT may deem necessary to secure for WSDOT the rights pursuant to this section.
- 13.4. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of WSDOT. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 13.5. Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to WSDOT with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license. Vendor shall exert all reasonable effort to advise WSDOT at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Vendor agrees to obtain, at its own expense,

express written consent of the copyright holder for the inclusion of Preexisting Material. WSDOT shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Preexisting Material delivered under this Contract. WSDOT shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor.

14. Site Security

While on WSDOT's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations. In addition, Vendor shall ensure compliance with the Information Technology security standards as stated in the Information Technology Manual, M 3017.00. Vendors are responsible for their customer support and engineers' actions and for any misconduct. WSDOT staff must be present when Vendors are on site.

Site Security

While on WSDOT's property, including but not limited to the Right of Way and buildings, Vendor shall conform in all respects with physical, fire, or other security regulations. Vendor shall take reasonable precautions to ensure that the property is secure from unauthorized intruders, vandalism or any other unlawful activity. Vendor shall require its employees working on-board Purchaser's Ferries and Terminals to abide by: (i) all applicable rules and regulations of the State of Washington and the United States Coast Guard (USCG) governing Vendor employees or contractors working aboard such vessels or terminals; and (ii) all proper orders by authorized personnel issued pursuant to such rules and regulations. Vendor shall be solely responsible for ensuring that all of its employees and contractors working aboard Purchaser's Ferries and Terminals have current and valid Transportation Worker Identification Credential cards issued by the USCG, if applicable."

11.10.1 Site Security Coordinator

Vendor is required to submit a copy of Exhibit D as a request of notification for site access with 2 business days notice. The request form must be submitted to the Site Security Coordinator and must provide the following additional information for each Vendor, or subcontractor, employee: name, date of birth, and driver's license number. Photo ID is mandatory and must be available prior to admittance and at all times while on site. While on Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations, including escort by a WSDOT employee at all times.

Site Security Coordinator: Helmut Steele

Address: 2901 Third Avenue, Suite 500, Seattle WA 98121

Phone: (206) 515-3474

Fax: (206) 515-3473

E-mail: steeleh@wsdot.wa.gov

When access privileges are granted to vendors, they will be issued a temporary access badge. If the vendor loses a badge, they will be responsible for the cost of a replacement badge. They will bear the responsibility in the event the lost badge is directly related to any theft or damage at the WSDOT/Ferries Division facility. Vendors who have been

issued keys are responsible to maintain their accountability. If the Vendor loses a key through their negligence, they will be responsible for the cost of all replacement keys and their associated locks.

15. Vendor Commitments, Warranties and Representations

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to WSDOT.

16. Minority and Women's Business Enterprise (MWBE) Participation

With each invoice for payment and within thirty (30) days of WSDOT Contract Administrator's request, Vendor shall provide WSDOT an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Vendor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Vendor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's **Review of Vendor's Records** section.

17. Protection of WSDOT's Confidential Information

- 17.1. possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without WSDOT's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by WSDOT. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. Should any confidential information received in the performance of this contract be breached, disclosure shall be made in accordance with [RCW 19.255.010](#) and [RCW 42.56.590](#).
- 17.2. Immediately upon expiration or termination of this Contract, Vendor shall, at WSDOT's option: (i) certify to WSDOT that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to WSDOT; or (iii) take whatever other steps WSDOT requires of Vendor to protect WSDOT's Confidential Information.

- 17.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.
- 17.4. WSDOT reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 17.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Contract Administration

18. Legal Notices

- 18.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Vendor at:

[Vendor]

Attn:

[Vendor address]

Phone:

Fax:

E-mail:

To WSDOT at:

State of Washington

Department of Transportation

Attn: *[Purchaser Contract Administrator]*

[Purchaser address]

Phone:

Fax:

E-mail:

- 18.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 18.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon Vendor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

19. WSDOT Project Manager

WSDOT shall appoint *[name]* who will be the WSDOT Project Manager for this Contract and will provide oversight of the activities conducted hereunder. WSDOT Project Manager will be the principal contact for Vendor concerning business activities under this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Project Manager assigned to this Contract. The WSDOT Project Manager information is:

Vendor Account Manager:

Address:

Phone:

Fax:

E-mail:

20. Vendor Account Manager

Vendor shall appoint an Account Manager for WSDOT's account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor's Account Manager will be the principal point of contact for WSDOT concerning Vendor's performance under this Contract. Vendor shall notify WSDOT Contract Administrator and WSDOT Project Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Vendor Account Manager:

Address:

Phone:

Fax:

E-mail:

21. Section Headings, Incorporated Documents and Order of Precedence

21.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

21.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

- a) Schedules A, and B *[if applicable]*;
- b) *[Purchaser]* *[RFX]* dated *[date]*;
- c) Vendor's Response to *[Purchaser]* *[RFX]* dated *[date]*;
- d) Any SOW entered into pursuant to this Contract;
- e) The terms and conditions contained on WSDOT's purchase documents, if used; and
- f) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Services to WSDOT.

21.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Contract;
- c) Schedule A; B
- d) *[Purchaser]* *[RFX]* dated *[date]*;

- e) Any SOW entered into pursuant to this Contract;
- f) Vendor's Response to *[Purchaser] [RFX]* dated *[date]*;
- g) The terms and conditions contained on WSDOT's order documents, if used; and
- h) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Services to WSDOT.

22. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

23. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SOW under this Contract shall be effective or binding unless it is in writing and signed by WSDOT and Vendor Contracting Officers. Only WSDOT Contract Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SOW on behalf of WSDOT.

24. Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

25. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for King County, Washington.

26. Subcontractors

- 26.1** Vendor may, with prior written permission from the WSDOT Contract Administrator, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to WSDOT for any breach in the performance of Vendor's duties or obligations. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to WSDOT, including but not limited to personal injury, physical loss, harassment of WSDOT employees, or violations of applicable Sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees.
- 26.2** The Vendor is solely responsible and liable for ensuring that the terms and conditions set forth in this Contract are incorporated into any partnering or subcontracting relationships with other entities for work related to this Contract. Liability includes management responsibility and quality assurance for work performed and financial responsibility for payments to and by partner organizations or subcontractor to others.
- 26.3** For work to be performed for WSDOT, WSDOT reserves the right to reject any of the Vendor's employees, suppliers, or Subcontractors with due cause. Any and all costs or expenses associated with replacement of any person or entity shall be borne by the Vendor.
- 26.4** WSDOT may, in the exercise of its discretion and judgment, identify certain of Vendor's employees as key personnel, and if so, the Vendor shall take all necessary steps to assure that said Vendor's employees are available and assigned to the work as long as said employees are employed by Vendor.

27. Assignment

- 27.1. With the prior written consent of WSDOT Contract Administrator, which consent shall not be unreasonably withheld, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to WSDOT that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.
- 27.2. WSDOT may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve WSDOT of any of its duties and obligations hereunder.

28. Publicity

- 28.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.
- 28.2. Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT *prior* to such use.

29. Review of Vendor's Records

- 29.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of WSDOT's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 29.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within King County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

- 29.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 29.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WSDOT's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

30. Right of Inspection

Vendor shall provide right of access to its facilities to WSDOT, or any of WSDOT's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

General Provisions

31. Patent and Copyright Indemnification

- 31.1. Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product or Work Product supplied hereunder, or WSDOT's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:
- a) Promptly notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 31.2. If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product or Work Product and provide WSDOT a refund. In the case of Work Product, Vendor shall refund to WSDOT the entire amount WSDOT paid to Vendor for Vendor's provision of the Work Product. In the case of Product, Vendor shall refund to WSDOT its depreciated value. No termination charges will be payable on such returned Product, and WSDOT will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one

(1) year, all costs associated with the initial installation paid by WSDOT shall be refunded by Vendor.

31.3. Vendor has no liability for any claim of infringement arising solely from:

- a) Vendor's compliance with any designs, specifications or instructions of WSDOT;
- b) Modification of the Product or Work Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or
- c) Use of the Product or Work Product in a way not specified by Vendor;

unless the claim arose against Vendor's Product or Work Product independently of any of these specified actions.

32. Save Harmless

Vendor shall defend, indemnify, and save WSDOT harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save WSDOT harmless shall not be eliminated or reduced by any alleged concurrent WSDOT negligence.

33. Insurance

33.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination.

33.2. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 33.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
- 33.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming WSDOT as an additional insured and providing WSDOT with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Contract provide for WSDOT's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to WSDOT, in the amount of \$1 million, during the initial and any subsequent terms of this Contract, and for six (6) years beyond the expiration or termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at WSDOT's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Contract means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by WSDOT (the beneficiary) of a written demand therefor.
- 33.4. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name WSDOT as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number ~~[XXX-XXX-XXX]~~ and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to WSDOT by the insurer.
- 33.5. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 33.6. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 33.7. Vendor shall furnish to WSDOT copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at WSDOT's sole option, result in this Contract's termination.
- 33.8. By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

34. Industrial Insurance Coverage

Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and

shall maintain full compliance with Title 51 RCW during the course of this Contract. WSDOT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

35. Licensing Standards

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

36. Antitrust Violations

Vendor and WSDOT recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by WSDOT. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to WSDOT resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

37. Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with WSDOT.

38. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

39. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

40. Treatment of Assets

40.1. Title to all property furnished by WSDOT shall remain in WSDOT. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in WSDOT pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the

“property” is Vendor’s proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in WSDOT.

- 40.2. Any WSDOT property furnished to Vendor shall, unless otherwise provided herein or approved by WSDOT, be used only for the performance of this Contract.
- 40.3. Vendor shall be responsible for any loss of or damage to property of WSDOT that results from Vendor’s negligence or that results from Vendor’s failure to maintain and administer that property in accordance with sound management practices.
- 40.4. Upon loss or destruction of, or damage to any WSDOT property, Vendor shall notify WSDOT thereof and shall take all reasonable steps to protect that property from further damage.
- 40.5. Vendor shall surrender to WSDOT all WSDOT property prior to completion, termination, or cancellation of this Contract.
- 40.6. All reference to Vendor under this section shall also include Vendor’s employees, agents, or Subcontractors.

41. Vendor’s Proprietary Information

Vendor acknowledges that WSDOT is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 RCW, WSDOT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor’s Proprietary Information, WSDOT will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

Disputes and Remedies

42. Disputes

In the event a dispute arises under this Contract, it shall be handled by a Dispute Resolution Panel in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

- 42.1. In the event a bona fide dispute concerning a question of fact arises between WSDOT and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 42.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 42.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 42.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- 42.5. WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 42.6. If the subject of the dispute is the amount due and payable by WSDOT for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided WSDOT pays Vendor the amount WSDOT, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

43. Attorneys' Fees and Costs

- 43.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 43.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

44. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

45. Failure to Perform

If Vendor fails to perform any substantial obligation under this Contract, WSDOT shall give Vendor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then WSDOT may withhold all monies due and payable to Vendor, without penalty to WSDOT, until such Failure to Perform is cured or otherwise resolved.

46. Limitation of Liability

- 46.1. The parties agree that neither Vendor nor WSDOT shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 46.2. Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or WSDOT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, WSDOT, or their respective Subcontractors.
- 46.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on

comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.

- 46.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

47. Termination for Default

- 47.1. If either WSDOT or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. WSDOT reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by WSDOT to terminate the Contract.
- 47.2. In the event of termination of this Contract by WSDOT, WSDOT shall have the right to procure the Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to WSDOT resulting from Vendor's breach. WSDOT shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe WSDOT for Vendor's default.
- 47.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 47.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

48. Termination for Convenience

When, at the sole discretion of WSDOT, it is in the best interest of the State, WSDOT Contract Administrator may terminate this Contract, including all Statement(s) of Work, in whole or in part, by fourteen (14) calendar days written notice to Vendor. If this Contract is so terminated, WSDOT is liable only for payments required by the terms of this Contract or any SOW for Services received and accepted by WSDOT prior to the effective date of termination.

49. Termination for Withdrawal of Authority

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

50. Termination for Non-Allocation of Funds

If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may terminate this Contract by seven (7) written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

51. Termination for Conflict of Interest

WSDOT may terminate this Contract by written notice to Vendor if WSDOT determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

52. Termination Procedure

- 52.1. In addition to the procedures set forth below, if WSDOT terminates this Contract, Vendor shall follow any procedures WSDOT specifies in WSDOT's Notice of Termination.
- 52.2. Upon termination of this Contract, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property or Work Product specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

- 52.3. Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon Price, if separately stated, for the Services received by WSDOT, provided that in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. WSDOT may withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.
- 52.4. Vendor shall pay amounts due WSDOT as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, WSDOT may charge interest on the amounts due at one percent (1%) per month until paid in full.

53. Covenant Against Contingent Fees

- 53.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 53.2. In the event Vendor breaches this section, WSDOT shall have the right to either annul this Contract without liability to WSDOT or, in WSDOT's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Contract Execution

54. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

55. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this ____ day of _____, 2__.

Approved
State of Washington
Department of Transportation

Approved
[Vendor]

Signature

Signature

Print or Type Name

Date

Print or Type Name

Date

Title

Title

Schedule A

Authorized Services and Price List

as of *[date]*

for
Contract Number KXXX
with
[Vendor]

[Vendor] is authorized to provide **only the Services identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

[List information required to be included by the Vendor, e.g., Service categories and descriptions, Prices (hourly rates), and Products (if any), etc.]

Schedule B

Statement of Work Template

The details of the specific Services, project or tasks should be negotiated by Purchaser and Vendor and memorialized in a Statement of Work (SOW). The Contract requires that the SOW reference the Contract number and address the following areas:

Project or Task Objectives

Scope and Description of Work, including Deliverables

Timeline and Period of Performance

Compensation and Payment

Vendor Staff, Roles and Responsibilities

Purchaser Staff, Roles and Responsibilities

Additional Terms and Conditions Specific to this SOW

Signature Block

Statement of Work [YY-YY]
to
Contract Number KXXX
for
Security Equipment and Software Maintenance Services

This Statement of Work (SOW) is made and entered by and between *[Purchaser]* (“WSDOT”), and *[Vendor]* (“Vendor”), for *[describe acquisition or purpose of SOW]*. This SOW incorporates by reference the terms and conditions of Contract Number *[XXX-XXX-XXX]* in effect between the WSDOT and Vendor. In case of any conflict between this SOW and the Contract, the Contract shall prevail. WSDOT and Vendor agree as follows:

1. Project or Task Objectives

[Describe in detail the project or task objectives.]

2. Scope of Work and Deliverables

Vendor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

[Describe in detail what work Vendor will perform. Identify all tasks, work elements and objectives of the SOW, and timeline for completion of the major elements of the project.]

Vendor shall produce *[describe in detail what deliverables Vendor will produce]*.

3. Timeline and Period of Performance

The period of performance for this project will start on *[start date]* and the work tasks are estimated to continue through *[end date]*. WSDOT has the right to extend or terminate this SOW at its sole discretion.

4. Compensation and Payment

WSDOT shall pay Vendor an amount not to exceed *[_____]* dollars (\$*___*) *[specify maximum dollar amount]* for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Vendor’s compensation for services rendered shall be based on Vendor’s Prices as set forth in the Contract’s Schedule A, *Authorized Services and Price List* as follows:

WSDOT shall reimburse Vendor for travel and other expenses as identified in this SOW, or as authorized in writing, in advance by WSDOT in accordance with the current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/poltoc.htm>). No payment of travel expenses will be made to Vendor for routine travel to and from WSDOT’s location. Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement. The amount reimbursed to Vendor is included in calculating the “not to exceed” amount specified above.

5. Vendor Staff, Roles and Responsibilities

6. WSDOT Staff, Roles and Responsibilities

In Witness Whereof, the parties hereto, having read this SOW *[YY-YY]* to Contract Number *[XXX-XXX-XXX]* in its entirety, do agree thereto in each and every particular.

Approved

[Purchaser]

Signature

Print or Type Name

Title

Date

Approved

[Vendor]

Signature

Print or Type Name

Title

Date

Schedule C
MWBE Certification